No. 10,317

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MINORU YASUI,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF OF STATE OF CALIFORNIA AS AMICUS CURIAE.

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BRIEF OF STATE OF CALIFORNIA AS AMICUS CURIAE.

The State of California, by leave of Court granted herein, files its brief as *amicus curiae* for the purpose of presenting its views upon some of the important legal questions raised by this appeal.

When the present case was before the Federal Court for the District of Oregon the State of California was permitted to file a brief as *amicus curiae*. The principal questions in that Court below concerned the authority of a Commanding General within a theatre of operations to impose for reasons of military necessity curfew hours upon persons of Japanese ancestry, and the validity of Public Law 503 (77th Cong., Ch. 191) under which the defendant was charged for violations of such orders.

INTEREST OF THE STATE OF CALIFORNIA.

The State of California is interested in the decision to be rendered on this appeal because:

1. Similar curfew regulations were adopted in California.

2. The decision would have a bearing upon the validity of the evacuation of persons of Japanese ancestry and other persons from the Western Defense Command in which California lies whose presence was deemed to be dangerous to the defense of the area.

3. The attack upon the power of the Commanding General to take these precautions for the defense of the Pacific Coastal zone challenges the authority of the Commanding General to institute dim-out, traffic, air raid and other measures of control which the defense of the State may require. Public Law 503, challenged herein as being unconstitutional, provides the sanction for the enforcement of these regulations.

4. A decision on these important questions would assist state and local law enforcement officers in cooperating with military and federal authorities.

5. If no authority exists under the circumstances by which such precautionary and preventive measures can be undertaken by the military authorities, the State of California will be faced with the problems which these measures were designed to meet. In some instances either statutory authority does not exist or constitutional limitations may prevent necessary action.

THE DECISION OF THE DISTRICT COURT.

The defendant, Minoru Yasui, was charged with having violated Public Law 503 (77th Cong., 2nd Sess., Ch. 191) in that, being a person of Japanese ancestry and residing within a prescribed military area, he failed to observe the curfew orders (Public Proclamation No. 3, March 24, 1942) issued by the Commanding General of the Western Defense Command and Fourth Army. (Tr. 2-6.) The trial Court, Judge James Alger Fee, found the defendant guilty as charged in the indictment. (Tr. 12.)

The defendant, born in the United States at Hood River, Oregon (Tr. 77), attacked the curfew proclamation of the Commanding General as unconstitutional upon the ground that as applied to American citizens of Japanese ancestry it was a discriminatory regulation based upon race and color alone, and that the curfew restrictions had been imposed upon him without due process of law. It was also charged that the curfew proclamation was not within the authority granted by Presidential Executive Order 9066. In support of these contentions it was argued that under the circumstances martial law powers could not be invoked to justify the proclamation. Public Law 503 was attacked on the ground that it improperly delegated to the President or to designated military commanders the power, first, to designate a military area or zone, and then to determine what acts should be prohibited therein. These in general are the arguments presented in similar cases now on appeal to this Court.[1]

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[1] *Gordon Koyoshi Hirabayashi v. United States,* on appeal to CCA-9th, No. 10,308;
Fred Toyosaburo Korematsu v. United States, on appeal to CCA-9th, No. 10,248.

The Court below, while recognizing the danger and the need for action (Tr. 18, 19), held that the curfew regulations could not be enforced in a civil Court against Japanese who were American citizens because

(1) The issuance of regulations and making the violation of them a crime was a legislative function;

(2) A military commander has no such legislative power (Tr. 31);

(3) The Courts cannot enforce the regulations of a military commander (Tr. 43);

(4) Nor could Congress make criminal the violations of the regulations (Tr. 44);

(5) While such regulations could be issued under martial law, martial law cannot be validly established unless,

a. It has been formally established by proclamation (Tr. 40);

b. In a theatre of active military operations the Courts have been closed and civil government is no longer able to function (Tr. 39—adopting the test of necessity of the majority dictum in *Ex parte Milligan,* 4 Wall. 2, 127 (1866));

(6) Such regulations may be imposed upon aliens unrestrained by constitutional limitations (Tr. 45-46);

(7) The defendant, after gaining his majority, elected to be a subject of the Empire of Japan

and thus, as an enemy alien, the curfew regulations could be properly enforced against him in criminal proceedings in a Federal Court (Tr. 46-51);

(8) Congress could make criminal the violations of regulations to be issued by the commanding general with respect to enemy aliens. (Tr. 46.)

PURPOSE OF THIS BRIEF.

Because of the interest of the State of California in having stated the principles by which the President and his military commanders may exercise measures of control over civilians while California remains a theatre of operations, the State by this brief seeks to direct the Court's attention to that portion of Judge Fee's decision which deals with martial law and the validity of Public Law 503. It does not express any opinion on the judgment and finding that the defendant surrendered his right to American citizenship by electing to become a subject of Japan. This is essentially a matter of Federal concern, and one which should invoke the most serious consideration of this Court. Regardless of any question of the defendant's status as an enemy alien, the State believes that the regulations even as applied to the defendant as a citizen should be upheld as a valid exercise of martial law.

As the general propositions have already been discussed by counsel in the briefs on file in the cases of *Korematsu v. United States,* No. 10,248, and *Hira-*

bayashi v. United States, No. 10,308, and by the State of California in its brief in the latter case, this brief will be of most service if it deals briefly with the opinion of the trial Court as it applies to the fundamental question of the application of martial law to the problem at hand and to the validity of Public Law 503. The opinion also deserves attention because it is contrary to the other decisions of Federal District Courts which have held the curfew and evacuation orders to be enforceable.[2]

SUMMARY OF ARGUMENT.

I. Martial law is not, as the trial Court declares, the unrestrained will of the Commanding General. Being applied to persons in domestic territory, the Constitution and laws prevail. It cannot be exerted unless military necessity requires.

II. Martial law is part of our civil law—a consideration which undoubtedly would have caused the trial Court to reach a different conclusion. Controls exercised under martial law by the President, or his subordinate military commanders, are part of the constitutional war powers of the President. Military necessity must justify any limitation upon the constitutional and legal rights of individuals. This question of military necessity is reviewable by the civil Courts.

III. In today's total war, the military authorities in a theatre of operations must have the power to take

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[2]Infra, p. 19.

precautions for the safety of the area and the successful prosecution of the war. The authority to act should not have to await the "utter necessity" required by the trial Court's decision, that is, the closure of the Courts and the deposition of the civil government by enemy action.

IV. Once the standard of military necessity is applied, a declaration of martial law should not be a prerequisite to its exercise. For the same reason, martial law may be limited to particular matters of military concern without assumption of complete control of the civil government.

V. The imposition of curfew hours by the military authorities is a proper measure of limited martial law. The privileges of individuals or groups must temporarily bend to the exercise of the right and power of the nation to defend and preserve itself.

VI. Public Law 503 is not invalid as an unconstitutional delegation of power. No legislative power is attempted to be delegated. The regulations are issued under the already existent martial law powers of the President and his military commanders. The Act merely provides a sanction for their enforcement in the Federal Courts. Neither is the law uncertain for it requires that a defendant must know, or should have known, the nature of the regulations and that his acts were in violation of them.

VII. In reviewing the validity of specific controls exercised by military authorities in time of war, the test should be whether or not the military authorities

have acted in good faith in view of the nature of the emergency and have abused the discretion which necessarily must be theirs in carrying out the defense of a particular area and conducting the war to a successful conclusion.

I. ANALYSIS OF THE TRIAL COURT'S DECISION WITH REFERENCE TO MARTIAL LAW.

A. Martial Law Confused With Military Government.

The trial Court held that the curfew regulations could not be applied to Japanese who were American citizens because martial law had not been declared, and martial law could be validly declared only when the civil Courts had been closed and the civil government deposed. Martial law, in the trial Court's opinion, is

> "complete and represents the arbitrary will of the commander, controlled only by consideration of strategy, tactics and policy and subject only to the orders of the President. Under martial law the commander can seize men and hold them before a military commission for a violation of the laws of war or his own regulations. Finally, he can legislate and bind citizens and others by rules established by him and governing their conduct in the future." (Tr. 32.)

This view that martial law is nothing more nor less than "the will of the commander" is entirely out of line with present-day concepts. It is a throw-back to

an early-day confusion between military law, military government and martial law.

> Wiener, *Martial Law—What It Is and What It Is Not,* pp. 6-15—A Practical Manual of Martial Law (1940).

Actually, the trial Court is describing military government, not martial law. As Winthrop says in his "Military Law and Precedents":

> "The often-quoted remark that martial law is simply 'the will of the general who commands the army' is a description much less apposite in practice to martial law proper or domestic martial law, than to that military government of enemies heretofore considered, and with reference to which in fact the observation was originally employed by Wellington.
>
> "Martial law is indeed resorted to as much for the protection of the lives and property of peaceable individuals as for the repression of hostile or violent elements. It may become requisite that it supersede for the time the existing civil institutions, but, in general, except in so far as relates to persons violating military orders or regulations, or otherwise interfering with the exercise of military authority, martial law does not in effect suspend the local law or jurisdiction or materially restrict the liberty of the citizen; it may call upon him to perform special service or labor for the public defense, but otherwise usually leaves him to his ordinary avocation." (Reprint Edition, p. 820.)

Martial law is not alien to our law, but is part of it although an extraordinary part.

> "Martial law insofar as it determines the scope and extent of military authority is a part of the law of the land, just as much as the law of contracts or of property. It is not an alien invader into our legal domain." (Wiener, *A Practical Manual of Martial Law* (1940), p. 14.)

As our Supreme Court has said in the leading case of

Sterling v. Constantin, 287 U. S. 378 (1932):

> "What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions."

Pollock, *Expansion of the Common Law,* pp. 105-106;

Chase, C. J., Concurring Opinion in *Ex parte Milligan,* 4 Wall. 2, 142 (1866).

Under military government, the power over persons in occupied territory is unlimited being subject only to the laws of war. Martial law, whether amounting to complete or partial control over persons in the United States, is limited by the constitution and the laws. The use of this power is always subject to judicial review. This Court recently in

Zimmerman v. Walker, CCA-9th, No. 10,093, Dec. 14, 1942,

refuted the trial Court's concept of martial law by upholding the power of the military authorities in military areas in time of war to take the precautionary and preventive step of detaining suspected persons by pointing out that such martial law action when con-

nected with public necessity was within the framework of the Constitution.

> "Measures like these are essential at times if our national life is to be preserved. When taken in the genuine interest of the public safety they are not without, but within, the framework of the constitution." (p. 8.)

B. The Appropriate Test of Necessity.

It is understandable that having adopted the premise that martial law is the unrestrained will of the commander, the trial Court should next insist that such a type of control should not be recognized unless enemy action has closed the Courts and resulted in the disruption of civil authority. This is the view of the majority of five in its dictum in the *Milligan* case, supra.

This test of necessity might have fitted the state of military operations in the days of the Civil War. However, it is now all too evident that those charged with the common defense should not have to stand by until an invasion has deposed civil government or even until the bombs begin to fall before they may take action for our civilian defense. Undoubtedly judicial thinking will be brought in line with today's methods of total war. This is fully discussed in the *Hirabayashi* brief under the heading, "The Test of Necessity Should Be Consonant With Today's Military Problems", page 21.

C. Must Martial Law Be Absolute or May It Be Limited to Particular Matters?

Having adopted the view that martial law is the arbitrary will of the commander, and can only exist when civil authority has been abrogated by enemy action the trial Court will not accept the view that the Commanding General may limit his control just to those certain matters pertaining to the defense of an area and leave undisturbed the courts and civil government. Hence the doctrine that martial law may be partial or qualified for the purpose of imposing dim-out, curfew or evacuation regulations was repudiated as a perversion of law and as being uncontrolled by law. (Tr. 34-35.)[3] This view seems to spring from the Court's reaction to those attempts of State governors to misuse martial law powers. It is generally admitted that there has been a gross misuse of State troops in times of peace by governors in capital-labor disputes and in the settlement of political and economic controversies.[4] However, the very cases of abuse cited show that martial law action is subject to the restraining force of the Constitution and the laws and that the courts will enjoin executives where it is apparent no military necessity exists.[5]

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[3]"There is a pernicious doctrine known as 'partial martial law' which was developed by an ambitious governor as a method of dictating regulations to the people of a state uncontrolled by the Constitution or laws thereof." (Tr. 34.)

[4]These cases are sometimes referred to as instances of "bogus martial law". Wiener, *A Practical Manual of Martial Law,* pp. 160-169.

[5]For example,
Miller v. Rivers, 31 F. Supp. 540 (1940);
U. S. v. Phillips, 33 F. Supp. 261;
Hearon v. Calus, 178 S. C. 179, 183 S. E. 18 (1935);
Sterling v. Constantin, 287 U. S. 378 (1932).

The guiding principle of martial law is that

> "Martial law is the public law of necessity. Necessity calls it forth, necessity justifies its exercise, and necessity measures the extent and degree to which it may be employed." (Wiener, *A Practical Manual of Martial Law,* p. 16.)

Applying this test of military necessity, it would appear that martial law in most cases must be something less than the complete taking over of civil government.

In

> *Commonwealth ex rel. Wadsworth v. Shortall,* 206 Pa. St. 165, 55 Atl. 952 (1903),

limited or qualified martial law was recognized.

> "Order No. 39 was, as said, a declaration of qualified martial law. Qualified, in that it was put in force only as to the preservation of the public peace and order, not for the ascertainment or vindication of private rights, or the other ordinary functions of government. For these the courts and other agencies of the law were still open, and no exigency required interference with their functions. But within its necessary field, and for the accomplishment of its intended purpose, it was martial law, with all its powers. The government has and must have this power or perish. * * * It is not unfrequently said that the community must be either in a state of peace or of war, as there is no intermediate state. But from the point of view now under consideration this is an error. There may be peace for all the ordinary purposes of life, and yet a state of disorder, violence, and danger in special directions, which, though not technically war, has in its limited field the same effect, and, if important

> enough to call for martial law for suppression, is not distinguishable, so far as the powers of the commanding officer are concerned, from actual war." (p. 954.)
>
> *Ex parte McDonald,* 49 Mont. 454, 143 Pac. 947 (1914)—"Martial law, however, is of all gradations";
>
> *In re Boyle* (Idaho, 1899), 57 Pac. 706.

Another authority refuting the view of the trial Court is found in

> Bishop, *New Criminal Law,* 8th Ed., Sec. 53 (1892),

which contains one of the best expressions of the principle:

> "Martial law is elastic in its nature and easily adapted to varying circumstances. It may operate to the total suspension or overthrow of civil authority; or its touch may be light, scarcely felt or not felt at all by the mass of the people, while the courts go on in their ordinary course, and the business of the community flows in its accustomed channels."

Circuit Judge Haney, in his dissenting opinion in *Zimmerman v. Walker* (CCA-9, No. 10,093, Dec. 14, 1942), recognizes that the Commanding General has the power to act although complete governmental control is not assumed. Avoiding any particular test of necessity and realizing that it is the necessity and not a proclamation which generates the power the opinion asserts that the basic question is whether a particular action is deemed "reasonably necessary" to protect the nation against invasion.

> "Whether a particular action is 'necessary' is a question of fact to be determined from proof of, among other things, the reason for the restriction, its purpose, and the improvement of methods and engines of war. What was not necessary a century ago, may be necessary today." (p. 15.)

The opinion concludes by stating that the writ of habeas corpus (which was there sought against the military authorities in the Hawaiian Islands) should issue if the Court below finds the authority of the military was "reasonably necessary" to forestall invasion. With these conclusions the majority opinion would be in full accord.

D. Where Action Is Justified, a Proclamation of Martial Law Is Unnecessary.

A principal prop of the trial Court's opinion is the assertion that martial law must first be proclaimed by Congress, the President, or by the Commanding General. (Tr. 40.) Today there seems to be general agreement that a proclamation of martial law is not a prerequisite before military authorities may exercise certain controls under their martial law powers. The fact is no proclamation is necessary. If the necessity exists to exercise military control in a particular manner, therein lies the justification. If the necessity and the occasion for the martial law are not present, words cannot give it life, nor if the necessity and occasion do exist is a proclamation necessary.[6]

> Haney, J., dissent in *Zimmerman v. Walker,* supra, p. 13.

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[6]The matter has been well expressed by Professor Charles Fairman when he wrote with reference to President Roosevelt's Execu-

In fact, even assuming that a proclamation is necessary, Proclamation No. 3 issued by Lieutenant General DeWitt (March 24, 1942, Tr. 68-73), imposing curfew hours upon the appellant and other persons of Japanese ancestry, provided the element of executive determination which Judge Fee would require before the Court should act to enforce the proclamation. (Tr. 42.)

II. CURFEW FOR PERSONS OF JAPANESE ANCESTRY IN PACIFIC COAST MILITARY AREAS WAS A PROPER MEASURE OF MARTIAL LAW.

It should be remembered that the companion cases here being considered involve the more drastic measures of evacuation. The instant case concerns the milder procedure of curfew. In an area of operations where there is a possibility that the civilian population will interfere with the defense of the area, the imposition of curfew restrictions is one of the most common practices of limited martial law. The measure is entirely precautionary. Where there is a danger of sabotage and espionage, such restraint upon the movements of persons considered to be disposed to assist the invader or to damage war industries or to convey

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tive Order of February 19, 1942 (Executive Order 9066), under which Japanese-American citizens were removed from coastal areas:

> "Probably the problem will only be confused by talking about martial law. The President has made no such proclamation and if he did his constitutional powers would not be increased one whit. The question in every case of military control would still be, can the action complained of be justified as apparently reasonable and appropriate, under the circumstances, to the defense of the nation and the prosecution of the war?" (*San Francisco Chronicle,* March 4, 1942, p. 14.)

military information to the enemy is not only proper but necessary to assure success in the present conflict.

The Court below fully recognizes the problems faced today by military commanders within a theatre of operation, and particularly does the Court point out that in view of the situation on the Pacific Coast persons of Japanese ancestry represented a reasonable classification for the regulations issued.

> "The conditions and necessities of preparation for modern war had previously been recognized by this court. The areas and zones outlined in the proclamations became a theatre of operations, subjected in localities to attack and all threatened during this period with a full scale invasion. The danger at the time this prosecution was instituted was imminent and immediate. The difficulty of controlling members of an alien race, many of whom, although citizens, were disloyal with opportunities of sabotage and espionage, with invasion imminent, presented a problem requiring for solution ability and devotion of the highest order." (Tr. 18, 19.)

The difference of opinion arises when the Court takes the position that the war power of the President and his subordinate military commanders is not extensive enough to authorize the adoption of curfew and other regulations for citizens in order to meet the danger. In view of the recognition that the presence of persons of Japanese ancestry on the coast created a military problem, it would appear upon the principles of martial law just reviewed that the curfew order as applied should be upheld.

The validity of curfew measures is also supported by those cases arising out of peace-time domestic disturbances where the Courts have upheld the power of the military to take the precautionary steps of detaining persons suspected of aiding the disturbances. (For a full discussion, see brief of State of California in *Hirabayashi v. United States,* No. 10,308, Point II, pp. 29-37.)

III. CONGRESS HAD THE POWER TO ENACT PUBLIC LAW 503 IN AID OF THE PRESIDENT'S POWER AS COMMANDER-IN-CHIEF AND OF HIS SUBORDINATE COMMANDING GENERALS TO MAKE RULES PERTAINING TO THE CONDUCT OF CIVILIANS IN PRESCRIBED MILITARY AREAS.

The Court below states that under Public Law 503, the commanding general was improperly delegated the power to legislate. (Tr. 31.) The power to adopt curfew and evacuation orders does not, under proper circumstances, require a delegation. The martial law powers of the President and his subordinate commanding generals to issue in time of war and in a theatre of operations regulations for the protection and defense of an area springs from the war power committed to the President under the Constitution.

> "The decision in the principal case indicates that the war power is ample to permit the making and enforcing of regulations necessary to protect strategic military areas essential for national defense and that 'in time of war a technical right of an individual should not be permitted to endanger all of the constitutional rights of the whole citi-

zenry'.'"[7] (41 Mich. Law Rev. 525, December, 1942.)

For a full discussion of the question of delegation of power and the alleged uncertainty of the statute, see the brief filed by the State of California in the *Hirabayashi* case, pages 37-49.

IV. THE DECISIONS OF OTHER DISTRICT COURTS HAVE UPHELD THE VALIDITY OF THE CURFEW ORDERS.

The decision of the trial Court in the instant case is at odds with the other decisions involving the identical questions concerning the power of the President and the commanding general to issue either curfew or evacuation orders as applied to Japanese who are American citizens. These cases are discussed in the State of California's brief in the *Hirabayashi* case, pages 49-53.

V. EXTENT OF JUDICIAL REVIEW OF ACTS UNDER MARTIAL LAW.

The only feasible test to be applied here is whether or not the commanding general has acted arbitrarily and abused the discretion which should be allowed him in the carrying out of his duties. As the Supreme Court said in

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[7]Reference is to the decision of the trial Court in *United States v. Hiribayashi*, USDC-WD (Wash.), No. 45,738, Sept. 15, 1942, which upheld the curfew orders here under review, as well as the evacuation orders as applied to citizens of Japanese ancestry.

Stewart v. Kahn, 11 Wall. 493 (1870):

"The measures to be taken in carrying on war and to suppress insurrection are not defined. The decision of all such questions rests wholly in the discretion of those to whom the substantial powers involved are confined by the Constitution."

A note

"Constitutional Law—Applicability of Curfew Regulations and Exclusion Orders to Persons of Japanese Ancestry" (41 Mich. L. R. 524, Dec., 1942),

discussing the trial Court's decision in *United States v. Hirabayashi*[8] and referring to the other decisions on the questions here under review says:

"The Court accepts the determination of the President as commander-in-chief and the military commander of the area that the measures here challenged are necessary to safeguard the Pacific coastal states from possible enemy attack, refusing to constitute itself a board of strategy to declare what is a necessary military area and what precautionary measures are to be taken. There would seem to be little question regarding the soundness of this position. If 'The power to wage war is the power to wage war successfully', it would seem essential that a certain measure of discretion as to the nature and extent of precautionary measures be given to those charged with national defense. It cannot well be argued that it is an unreasonable and wholly arbitrary assumption that among the large Japanese population residing in the Pacific coastal states there is sufficient

[8]USDC-WD (Wash.) ND, No. 45,738, Sept. 15, 1942.

disloyalty to require evacuation of all those of Japanese ancestry, citizens and aliens alike. When military areas are once established, certain constitutional rights of individuals therein, not absolute in and of themselves, must give way when in conflict with other rights granted for the protection, safety, and general welfare of the public." (p. 525.)

The matter of the extent of the Court's inquiry is further discussed in the brief of the State of California in the *Hirabayashi* case, pages 53-57.

CONCLUSION.

The concept that martial law represents, or must be, the complete and unrestrained control over civil government and the people in a military area is incorrect. However, due to the earlier confusion with other types of military control such is the idea in the minds of many laymen and some Courts. Actually today martial law merely means that in time of war and in strategic areas of the United States the military authorities may exert controls over persons which are deemed necessary for the defense and internal security of the area and for the successful carrying out of military operations. It should be made clear that martial law is part of our civil law, is limited by the Constitution, and is subject to review by our civil Courts. Refuting the idea that the review of action under martial law is not within the province of our civil Courts the Supreme Court has said:

> "There is no such avenue of escape from the paramount authority of the Federal courts." (*Sterling v. Constantin,* 287 U. S. 378, 398 (1932).)

But in applying the test of military necessity it will be obvious to the Court that the test of necessity suggested by the majority dictum in the *Milligan* case will not meet the stark realities of today's warfare.[9] Under conditions of modern warfare it is increasingly clear that the military authorities here at home must have the power to exercise certain controls over civilians in strategic military areas for the protection of the people, the safeguarding of the war plants and utilities, and for the defense of the nation. This is particularly evident to the people of the State of California. No artificial test of the occasion when this power may be exercised should be adopted. Each particular action taken may be reviewed by the Courts to determine if within the range of honest judgment it can be said that the military authorities are guilty of an abuse of discretion in the carrying out of their military duties. It was entirely competent for Congress by the passage of Public Law 503 to provide a sanction enforceable in the Federal Courts for the carrying out of the curfew and other regulations adopted by the commanding general under his martial law powers. Daily it is being understood that in every phase of living our citizens, as groups and as individuals, must make sacrifices and submit to various controls in order

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[9] "What was not necessary a century ago, may be necessary today." Haney, J. in *Zimmerman v. Walker,* supra, p. 15.

that this war of survival may be successfully prosecuted. Any controls curtailing the rights of individuals exerted by the military will pass with the passing of the particular military necessity which called them forth—a promise not as capable of fulfillment when such controls are written into statutory law.[10]

Thus this Court is afforded the opportunity of dissolving the misconceptions concerning the use of martial law in time of war by the Federal military authorities and of stating clearly in terms of today's methods of warfare with particular reference to the situation in California and on the rest of the Pacific Coast the principles which will guide our military commanders and the authorities of the State of California in solving their mutual problems concerning the defense of the State and Nation.

Dated, San Francisco,
February 17, 1943.

Respectfully submitted,

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[10]The Court is respectfully referred to the conclusion in the brief filed by the State of California in *U. S. v. Hirabayashi* (supra, at page 57), for a statement of the guiding principles upon which it is believed that the decision in this case and in the companion cases should be written.